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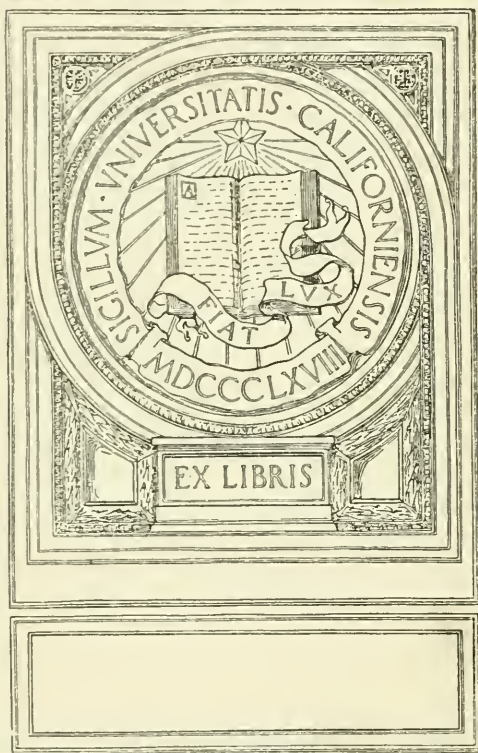
BRITISH



CONSTITUTION



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THE
BRITISH CONSTITUTION.

BY THE LATE
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ROCHESTER, N. Y.
LAWYERS' CO-OPERATIVE PUBLISHING COMPANY.
1893.

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PREFACE.

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The British constitution is a subject worthy the most attentive study. The student of political philosophy will here reap rewards richly compensating for any amount of labor and research. The joint result of Saxon and Norman wisdom, it has traveled through its centuries of experience, only to continually add strength to its foundations, beauty to its proportions, harmony in the action of its different forces, and the still increasing promise of perpetuity in the blessings it confers. It is the largest monument of worldly wisdom which the centuries have to bequeath to us. The science of government itself has little to offer which is not embraced in its past history, or its present organization. No one can contemplate this stupendous and beautiful fabric, standing out in all its colossal proportions, and realize that at least thirty generations of men have been the architects that have reared it upward, story by

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story, without being deeply impressed with the great truth, that all time-lasting structures can exist and be perpetuated only through those powers and energies which are common to the race, and actually exercised through its organic life. It is thus that the deficiencies of one man, or one generation, are made good by the excess of power developed through another or others, so that, in the end, institutions are generally the work of the race of man, and not of the individual.

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THE BRITISH CONSTITUTION.

CHAPTER I.

ANGLO-SAXON INSTITUTIONS.

The British constitution is to be considered:

- I. In its past history.
- II. In its present workings.

In its past history our attention will mainly be directed:

1. To its sources, the Anglo-Saxon institutions, in connection with the modifications introduced by the Norman conquest.

2. The charters of rights successively wrested from the king by his principal barons.

3. The origin and growth of the English parliament, including the successive steps or stages by which the two houses attained their political power, and the principle of representation became firmly established.

The Anglo-Saxon institutions were the growth

of several centuries. Brought there originally by the hardy followers of Hengist and Horsa, they were essentially modified, and new ones originated in consequence of the peculiar position under which their dominion was established, and the circumstances by which they were always surrounded. They were compelled to sustain themselves among a conquered people, the Britons, and that fact no doubt created new, or greatly modified existing institutions.

In respect of property and condition, there were three classes. Of these the first were slaves, who were probably mostly or wholly made up of the conquered Britons. The second were ceorls, who were freemen, and formed the bulk of the population. The third were eorls or thanes, who formed the nobility or gentry,* the former having reference to birth, while the latter derived his title through the possession of landed property. It was the ownership of landed property that mainly gave to the Saxon his standing and political rights. There was an aristocracy, but not limited to hereditary descent. It was not the birth, but the acquisition of a

*Creasy, 40, 41.

defined amount of landed property, that transformed the ceorl into the thane.

The lowest and simplest political division among the Saxons was the township,* which had its reeve or elective chief officer, and also four good and lawful men, who with him represented the township in the courts of the hundred and the shire. These were elected by the commonality, who also had the regulation of their own police. If any crime was committed in their district they were bound to pursue and apprehend the offender. Each township generally had its own local court, which was subordinate to the hundred court, and also to the shire, moot, or county court. These Saxon townships have very generally given way to the Norman manors, and the modern parishes.

The Saxon hundred was a mere territorial division, and was subdivided into tythings. Each hundred had its court, held monthly, and subordinate to the shire or county courts, which were held once a year, and were presided over by a bishop or earl.

*Creasy 43.

Independent of the institution of slavery, there were two oppressive customs among the Saxons. One was the system of frank pledge, by which every man was bound to be enrolled in some tything, the members of which being, to a large extent, mutually responsible for each others' good conduct.* The other was that every member of the commonality was bound to place himself in dependence upon some man of rank and wealth as his lord. Otherwise he was liable to be slain as an outlaw. The result of this was that many of the ceorls were legally annexed to the lands of their lords, but in other respects were personally free.

A large proportion of the population was devoted to agriculture. There were, however, some towns that had already acquired importance. These were called burghs, fortified places. In these, also, the free Anglo-Saxon spirit was manifested. The citizens elected from their own number their local officers, those necessary for the purposes of municipal government, at the head of whom was their borough reeve, who presided over their local courts, and

*Creasy. 44.

in time of war, led the armed citizens to the field.

The trial by jury is an institution attributed to the Anglo-Saxons, and certainly its rudiments are traceable to Saxon jurisprudence.

In regard to the government, the constitutions in the several states composing the heptarchy, and subsequently in the united kingdom, appear to have been much the same.

At the head of the state was the king, but the descent of the crown was irregular. The form of an election seems to have been observed, and a coronation and acceptance by the people necessary.*

When crowned and received, he was the national executive, and an essential part of its legislature. He received and expended the revenue; was the center and source of all jurisprudence; the chief of the nation's armies;† the head of its landed property; the lord of the free and of all burghs except such as he had granted to others.

Coexisting with the king, if not anterior, and his elector, was the witenagemote, the great

*Brougham III, 197.

†Turner's Anglo-Saxons, III, 217.

council or assembly of the barons, who convened together on the summons of the king, and over whom the king himself presided. This great council of witan, or wise men, consisted of nobles, holding land, the superior thanes, archbishops, bishops, abbots and priors, and milites, or those who were afterwards called knights. There was in this council nothing like representation, and hence nothing strictly resembling the modern parliament. It was an independent council, deriving its strength from the individual power of its members, not from their acting in a representative character. The English monarchy has always had about it this interesting feature, viz: it has been the government of the king in council: Thus from the earliest periods the witan, or wise men, composed the council of the king, and the laws were made in the joint names of both.

The witan elected the king from among the members of the blood royal; sometimes deposed him for misconduct; formed the supreme court of justice in civil and criminal cases; and advised the king on questions of war or peace,

and also on all important measures of government.

The regular revenue was chiefly derived from the royal domains, and the direct taxes raised by the witenagemote.

There was a regular church establishment, and a body of nobles, some of whom were distinguished by their birth, others by their office.

Thus the Anglo-Saxon government was an aristocratic monarchy, a kind of feudal aristocracy, in which the whole political power was shared between the sovereign and the nobles, clerical and lay.* The third estate, the commons, had no share whatever in the Anglo-Saxon form of government.

We are now ready to contemplate the Norman. This constitutes the fourth element, foreign in its nature, which enters into the composition of the English nation. The first in order was the Roman; the second, the Anglo-Saxon; the third, the Dane; and the fourth, the Norman. Each of these successively subdued, and for a time ruled in England. Of these, the

*Brougham, III, 202.

Danish was the least fruitful in results, while the Saxon was the most important and the most lasting; and the Norman, the next in order, as regards both its present and future consequences.

The year 1066 was signalized by the overthrow of the Saxon monarch, and the accession of William the Conqueror to the English crown. A few days only transferred him from the Norman dukedom to the English throne.

Normandy was a large province in France, bordering upon the English channel. A century and a half had rolled away since the Normans under Rollo, their first duke, had conquered, and obtained by treaty, this province, which they called Normandy. Here their stern northern nature had become modified and considerably changed by the new civilization that surrounded them, the new influences under which they were brought, and the circumstances under which they had existed for so long a period of time. Their national character had its bright and dark side. In the first we discern that orderly and intelligent spirit, "which made them establish and preserve in their province a

regularity of government, system and law, which contrasted strongly with the anarchy of the rest of France. The Norman had a steady fixity of purpose, a discernment of the necessity of social union and mutual self-sacrifice,* of free will among the individual members of a state for the sake of the common weal. In the second we perceive in the Norman nobility, pride, statecraft, merciless cruelty, and a coarse contempt for the industry, rights, and feelings of all whom they considered the lower classes of mankind."

The institutions of continental Europe, took their shape, in the outset, from the conquest of the Roman provinces by the hordes of wandering barbarians; the settlement in those provinces; the new circumstances under which they were placed; the new relations arising between the conquerors and the conquered; and the modifying influence exerted by the institutions of the one over those of the other. The barbarians brought with them no fixed and determinate form of social life,† and on the side of the Romans that life was actually dying of inanition.

*Creasy, 55.

*Guizot. Representative Government, 281.

Hence long disorders arose, the reign of force and dismemberment of sovereignty.

The Norman conquest of England brought with it no such results. Between the Normans and Saxons existed many points of resemblance. They had the same origin, analogous manners and language, almost identical civilization and warlike spirit. There could not, therefore, be as on the continent, a general and permanent abasement of one race before the other. Nothing short of entire annihilation of the Saxon race could prevent its exerting an active and powerful influence upon the Norman.

Again, the political institutions of the two, although not identical, were extremely analogous.* Absolute power never existed in England as on the continent. Oppression existed in fact, but was never established by law.

The Norman and Saxon professed the same religion, and one, too, the Roman Catholic, that everywhere had the same hierarchy, the same orders of clergy, the same faith and forms of worship. There was this important difference which led to fruitful results. On the continent

*Guizot, 282

the clergy were Romans ; in England, Saxons and Normans. In the former, they were more on the side of kings ; in the latter they assumed a place among the landed aristocracy, and in the nation. Their political power, in the latter, has always been on the decline.

It naturally resulted from all this, that each people having institutions analogous to each other, and pressing them forward with an almost equal energy, their coexistence and conflict would serve to modify each other, and to give such modified result a character of greater strength and permanence.

The institution which marks most strongly the establishment of the Norman in England, was the feudal system. Some traces of this system may be found in Saxon jurisprudence, but its oppressive weight never bore strongly upon the nations previous to the conquest.

This system was completely established in Normandy. The comparatively small extent of the province ; the establishment there of the conquering Normans over the subject race which they subdued ; the peculiar elements of the Norman character ; all combined to perfect that

system, and thus give to Normandy whatever of benefit or injury could legitimately be derived from it. William, having had his birth, education, and experience as a ruler, all within the operations of this system, could not rest quietly until its firm establishment upon English soil. The circumstances, formerly adverted to, which favored its introduction and growth in the Roman provinces on the continent upon the conquest and settlement of the barbarians, would apply with much greater force to the Norman conquest and settlement in England. The subject races on the continent were incapable of much resistance, and their uprising, under oppression, could be little feared. Hence the feudal system was not driven to expend all its energies in preserving a quiet conquest.

But the settlement of the Normans, and the preservation of their authority, were to be effected among a people as brave and warlike almost as themselves. Hence the early introduction, and rigorous enforcement, among the Saxons of England, of that system as it then existed in the province of Normandy. The result afforded a full illustration of this fact.

On the continent, after the conquest and settlement of the barbarians, we hear very rarely of any insurrections of the original inhabitants. The wars and conflicts were between the conquerors themselves. But in England we find them between the conquerors and the conquered people.

The results of the establishment of this system, with all its rigors in England, were twofold :

1. The little less than slavery of the laboring population. I allude to the state technically termed villeinage. The terms villein, serf, or slave, originally meant nearly the same thing, although the slave always differed from the other two.

Some serfs or villeins, termed villeins regardant, were annexed to certain lands, passing into the dominion of heirs or purchasers, whenever such lands changed owners. Others termed villeins in gross were bought and sold without any reference to land. The latter of these were never very numerous, but at the commencement of the thirteenth century, the former are supposed to have embraced the larger part of

the laboring agricultural population of England.*

The villein was subjected to the following :

1. His service was uncertain and indeterminate, depending upon the master.
2. He was liable to beating, imprisonment, and every other kind of chastisement.
3. He was incapable of any property acquisition.
4. He passed to each successive owner of the land, like other chattels.
5. He might be severed from the land, and sold in gross by a separate deed.
6. This condition descended from parent to child, and thus became inheritable.

But from this extreme state of degradation, where the Saxon ceorls and the Saxon thralls, or slaves, were reduced to about the same level, we behold a gradual emancipation effected through the wise, strong, humane, liberty-loving provisions of the common law of England. A few of its provisions only can be noticed.

a. An illegitimate child, born in villeinage, being nullius filius,† and having no inheritable blood could not inherit the condition of villeinage.

*Creasy, 86.

†Creasy, 89.

b. A villein remaining unclaimed for a year and a day in any privileged town, was freed from his villeinage.

c. The lord might at any time disfranchise his villein.

d. There were many acts of the lord from which the law itself would infer disfranchisement whether designed or not. These embraced all those acts by which the lord treated the villein as a freeman. Such as : 1. Vesting in him the ownership of lands. 2. Accepting from him the fœdal solemnity of homage. 3. By entering into an obligation under seal with him. 4. By pleading with him in an ordinary action.

The second result which the enforcement of this system disclosed was in the securing more order and regularity, and the creation of a stronger central power in the monarch. To this latter various things contributed, as : 1. The immense wealth of the crown independent of any contributions from its subjects. 2. The readiness with which the Saxon part of the population ever served the king against any of the rebellious Norman barons. 3. The great intellectual capacity and energy of the Norman

kings down to the time of John. 4. A change made by William in the allegiance of the vassals. Previously to the conquest the vassal swore fealty absolutely to his baron.* His oath to the sovereign excepted his duty to his liege lord. As a result to this he was bound to follow the latter in any rebellion against the sovereign. The Conqueror would suffer no divided allegiance. He required the oath of fealty to be made to himself without any reservation or exception, and he forfeited as well the lands of the sub-vassal as those of the vassal himself, if the tenant followed his liege lord in rebellion against the king.

Thus viewing England at the commencement of the twelfth century, aside from some peculiar laws, customs and institutions of both Saxons and Normans, we have three great facts out of which to work out the problem of English constitutional freedom. These were : 1. An enslaved laboring population, but along with it, the unceasing efforts of the common law, finally successful, at emancipation. 2. A strong body of nobles, bound together by a sense of common

*Brougham, 111, 206.

danger, and constituting altogether a powerful aristocracy. 3. A strong central power centering in the crown ; much stronger than anywhere else is found coexisting with feudal institutions.

The political power, at this period, is all lodged with the king and the barons. There was then, in a political sense, no people in England. The power exercised by the barons, was partly political and partly proprietary. The latter, however, was very much impaired by the new provision, just noticed, made by the Conqueror, as to fealty. The prospect certainly then was that the English government would settle into an unmitigated despotism.

CHAPTER II.

CHARTERS OF RIGHTS.

We are now ready to glance at the second general point presented for consideration, viz.: the charter of rights successively wrested from the king by his principal barons

It has been well remarked by Guizot that “liberties are nothing until they have become rights, positive rights, formally recognized and consecrated.* Rights, even when recognized, are nothing so long as they are not entrenched within guaranties. And lastly, guaranties are nothing so long as they are not maintained by forces independent of them, in the limit of their rights. Convert liberties into rights, surround rights by guaranties, intrust the keeping of these guaranties to forces capable of maintaining them, such are the successive steps in the progress towards a free government.

“This progress was exactly realized in En-

gland. Liberties first converted themselves into rights ; when rights were nearly recognized, guaranties were sought for them ; and lastly, these guaranties were placed in the hands of regular powers. In this way a representative system of government was formed."

No inconsiderable a portion of the rights, and guaranties, and even forces that maintain them, embraced in the British constitution, have been wrung reluctantly from the monarch ; have been wrested, sometimes, not without violence, from the proud prerogatives which were claimed to be inherited in the kingly office. This commenced even with William the Conqueror.

Although the fear of the Anglo-Saxons served to bind closely together the king and his Norman barons, yet the former, constituting the great body of the English population, and struggling to preserve their Saxon laws, could not be disregarded with impunity. William felt bound to respect these, and in 1071, gave a charter, giving assurance that these laws should be maintained. But this was a mere recognition of a right without even the semblance of a guaranty

to enforce it. The consequence was, that the right recognized was often violated.

A charter was granted by Henry I, containing a solemn promise to respect all ancient rights. The promises were large and liberal, but they were incessantly violated.

Stephen, the successor of Henry I, granted two charters to his subjects ; the one confirming the liberties granted by Henry I, and the laws of Edward the Confessor ; and the other promising to reform the abuses and exactions of his sheriffs.*

Even the charter of Henry II, in 1154, expresses nothing more than a recognition of rights, containing no new promise, and no concession of guaranties.

No concession or charter ever proved of much avail until we come to the reign of John, the period of magna charta, in 1215. Here, a number of things combined together to produce a result, one of the most momentous anywhere recorded.

a. The title of John to the crown was defective, Arthur, the son of an elder brother, being

*Guizot, History Representative Government, 305.

the real heir, and who is supposed to have been murdered by John.

b. The licentious acts and cruelties of John had rendered him an object of hatred, loathing, and deep aversion to the English barons.

c. The loss of Normandy deprived English barons of their Norman homes, and rendered them more purely English. The Norman and Saxon hereafter are found amalgamating together, and instead of mutual hostility a union is gradually forming between them.

d. There was as yet no standing army, the raising of forces still depending upon the principles embraced in the feudal system.

e. Stephen de Langton, both cardinal and primate, was an Englishman, having English sympathies, and heartily united with the English barons in their struggle with the crown.

f. The existence of the commons, the people, began to be an established fact in England. The barons were the first to make this discovery, and to invoke their aid against the tyrant. Besides, as they demanded concessions from the king, they were also willing to make like concessions

to their own vassals, so that the feudal fetters bound with far less severity.

g. The character of John, his dissimulation, rashness and pusillanimity, his treachery and weakness, all conspired to render him just the very king, to all appearances, sent for the purpose of granting the great charter.

After various negotiations and acts of hostility between the king and barons, the parties finally met on the 19th June, 1215, on the plain of Runnymede, a grassy plain of about one hundred and sixty acres, on the south bank of the Thames, between Staines and Windsor. Here was wrested from John, magna charta, the great charter of English rights, devoted almost exclusively to the settlement of the rights, and confirmation of the privileges claimed by the laity.

This charter seems to have been the first document establishing a distinction between the greater and lesser barons,* and the higher and lower clergy, leading to the fact of separation between the two houses of parliament. It also determines, with great accuracy, what had been

*Guizot, Representative Government, 314.

obscure and ambiguous in the feudal laws, modifying and mollifying, to a great extent, their operation. It fixes the amount of relief; it provides that, with certain trifling exceptions, no escuage, or extraordinary aid, shall be imposed except by the national council of the kingdom, thus furnishing the germ of the principle that no tax shall be imposed without the consent of those who are taxed, or their representatives.

The barons by no means limited their demands to the obtaining of privileges for themselves. Almost all the immunities granted to them, with respect to the king, the vassals obtained with respect to their lords.

Very important provisions were introduced regulating the administration of justice.

By article thirty-nine, it is provided: "No freeman shall be arrested or imprisoned, or dispossessed of his tenement, or outlawed, or exiled, or in anywise proceeded against; we will not place or cause to be placed, hands upon him, unless by the legal judgment of his peers, or by the law of the land."

And by article forty: "Justice shall not be sold, refused or delayed to anyone."

It makes the king grant and assure to the city of London, as well as to all the other cities, boroughs, towns and harbors, the possession of their ancient customs and liberties.

It provides for holding the general council of the kingdom concerning the assessment of aids, as follows : " We shall cause to be summoned the archbishops, bishops, abbots, earls, and the greater barons of the realm, singly by our letters. And furthermore we shall cause to be summoned generally by our sheriffs and bailiffs, all others who hold of us in chief, for a certain day, that is to say, forty days before their meeting at least, and to a certain place : and in all letters of such summons we will declare the cause of such summons.

It also provides that all merchants shall have full and free liberty of entering England, of leaving it, of remaining there, and of traveling there by land and by water; to buy and to sell without being subject to any oppression according to the ancient and common usages.

The foregoing embrace the principal provisions contained in the great charter. They are, thus far, nothing but promises, concessions

of rights. The barons, however, had now seen sufficient to be satisfied that, without adequate guaranties, there could be nothing to insure the performance of these promises. They accordingly provided the following as such guaranty, viz: the election by them of twenty-five out of their own number, who should be charged to exercise all vigilance, that the provisions of the charter may be carried into effect, their powers to be unlimited. Their duties were the following: In case the enactments of the charter were violated by the king in the smallest particular,* they should denounce the abuse, before the king, and demand that it be instantly checked. If the king fail to comply with this demand, then the barons were vested with the right, forty days after the issuing of the summons, to prosecute the king, to deprive him of his lands and castles until the abuse should be reformed to their satisfaction.

This was undoubtedly as complete a guaranty as the spirit of that age required, or its comprehension could understand. The great defect was, the want of constitutional forces to enforce

*Guizot, Representative Government, 315, 316.

its observance. The only forces it provided were a civil war, a resort to physical force. This was in harmony with the spirit of the age. The embodiment of political force in the constitution itself, and its quiet, peaceful production of effects without a resort to the calamities of war, had not then entered the conceptions of men. But even this forcible guaranty was of great value, as it centralized the feudal aristocracy by organizing the council of barons.

John afterwards procured the great charter to be annulled by the pope, Innocent III, and the barons excommunicated; but Archbishop Langton refused to pronounce the sentence. John had scarcely got his army on foot when he was called away by death.

The evil of relying upon physical force, a civil war, to secure the observance of guaranties, was soon perceived and strongly felt. Even under the reign of John's successor, Henry III, efforts were made for other securities than force. In the early part of it, a new charter was granted, corresponding mainly with that granted by John, but in it the right of resistance by

armed force, in case the king should violate his promises, was not included.

Repeated violations of the charter took place, and in order to obviate these the expedient was adopted of appointing twelve knights in each county, who should inquire what, according to ancient usages, were the rights of the king and the liberties of his subjects.

Henry, on coming of age, revoked all the charters he had granted. This gave rise to great discontents, and these to new confirmations of charters, which were again violated. Civil war was now declared. Rebellion occurred, but its aim now was less to obtain the renewal of charters than to found practical guaranties of recognized rights. The result was a general renewal of the charters, granted on the 14th March, 1264. This was little other than a treaty of peace between the king and the barons.

The struggle continued with unabated force under Edward I; but neither party appealed to arms. The day of physical force had, for the present gone by. The contest was continued,

but its theatre was changed. So long as material forces were looked to for the enforcement of guaranties, it is clear that the higher triumph of political forces peacefully accomplishing their results through the constitution, can never take place. Both parties cannot fail in time to grow weary of a constant resort to physical force. It impoverishes and destroys without leaving any equivalent. The spirit it engenders is only one of hatred and hostility. Its mission, therefore, is well and wisely limited.

Edward was a conqueror and much engaged in wars. The prosecution of these required large sums of money, to obtain which he did not scruple to adopt violent and arbitrary measures. This resulted in complaints and dissatisfaction. During his absence on the continent, his representative in England, the prince regent, assembled a parliament in October, 1297. There a general confirmation of the charters, with several additions, was demanded, which the prince regent granted, and Edward some time after sanctioned. On his return to England, the barons demanded that, in his own

person, he should confirm them. After considerable evasion, he finally granted a new confirmation, but with a restrictive clause which really annulled the grant.

This raised against him a storm of public opinion which threatened a resort to force. Being severely pressed, he finally convoked a parliament in March, 1300, at which he confirmed, without any restrictions, all the concessions he had already made, superadding to them new guaranties. These latter principally consisted in the provision that the charters should be publicly read in the county courts four times every year,* and that there should be elected in each county court, from among the knights of the court, three justices, sworn to receive all complaints of infractions of the charters, and to pronounce penalties against the offenders.

So also in a parliament held in 1301, Edward again confirmed the charters.

These repeated oaths of confirmation hung heavy upon the conscience of Edward. They subjected him to a restraint which he but illy endured. Towards the close of the year 1304.

*Guizot, Representative Government, 329.

he applied to Pope Clement V, for a release from these oaths. By a bull, dated January 5, 1305, the pontiff declared that all the promises and concessions made by Edward were abrogated, null and void.

This bull he, for a long time, kept secret, resorting to secret manœuvres to overthrow the charters. But it was now too late. Almost a century had elapsed since the great charter had been wrested from king John on the plains of Runnymede. Since that time almost a constant warfare had been kept up between the king on the one side, and the barons and growing power of the commons on the other. This had been waged on battle-fields and in parliamentary discussions. The eye of the nation had seen the one, and the ear of the nation drank in the other, until a public opinion began to be formed, before which, in the absence of large standing armies, monarchs themselves were becoming impotent. Hence, the confirmation by Edward in 1301, was the last confirmation ever made. The right which it proclaimed was definitely recognized. From that period the charters, notwithstanding all attacks made upon

them have remained as the immovable basis of public right in England.*

We now close the consideration of that part of the British constitution derived from charters. The rights thus acquired have not come up from the people, and been by them maintained, but they have come down from the throne, through the agency of the barons. They have been wrested by force, physical and moral, from that which at one period, concentrated all political power, the crown. England owes much, if not all, her constitutional freedom and power to the stern integrity, inflexible purposes, and steady onward progress of her baronial aristocracy. And we shall presently find that the same power so efficient in wresting rights under the form of concessions from the crown, constitutes, in the working of the constitution, that element of conservatism, strength and stability, that affords the promise of perpetual endurance.

*Guizot, Representative Government, 330.

CHAPTER III.

ORIGIN AND GROWTH OF THE ENGLISH PARLIAMENT.

We now proceed to the third branch of inquiry relating to England's constitutional history, viz: the origin and growth of the English parliament, including the successive steps or stages by which the two houses attained their political power, and the principle of representation became firmly established.

This assumes directly the contrary position from that just considered. That assumed that all political power centered in the crown, and that all rights were nothing more than concessions from prerogative. This, that the people were the great source of power, and that all authority legitimately came from them. The first brings power from above; the second summons it from below. The point at which they meet is the central, focal one, around which

revolves the forces that together compose the British constitution.

It is essential here to understand the different functions of that general power which governs society.

First, we have the legislative, which imposes rules and laws upon the mass of society, and even upon the executive power. It is in its legislative capacity that the sovereignty of the state receives its highest development.*

But the law-making power can be of little effect without that necessary accompaniment, the law-executing power. Next, therefore, appears the executive, and this takes the daily oversight of the general business of society, war, peace, revenue, general execution of the laws.

But this law-executing power must be guided aright in its action. Hence the necessity of the judicial, which ascertains the law, defines it, puts upon it a construction, applies it to the many purposes of business and life, and adjusts all matters of private interest between individuals and the state and its citizens.

*Guizot, Representative Government, 288.

In addition to these is the administrative power, which is charged under its own responsibility, with the duty of regulating matters which cannot be anticipated and provided for by any general laws.

The centralization of these four powers, and their union in one man creates a despotism. Their separation, and distribution in such a manner as that they shall severally operate as mutual restraints and checks upon each other, creates a free government. It is in their union and their separate action that we find most of the distinctive differences between the monarchical governments of the continent, and the mixed, free government of great Britain.

On the continent centralization has destroyed all localization, absorbed all local powers, and resulted in a more or less strongly unqualified absolutism.

In England, fortunately, local powers have never been destroyed. They have been preserved through a thousand vicissitudes. They have been harmoniously developed, have regulated and defined their own action. The central government, as we now behold it, has been a

gradual emanation from them. Its formation has had a commencement, a progress, a history, all replete with interest and instruction.

The Saxons, as we have seen, had their witenagemote, or council of wise men, who were advisers of the king. The first Norman kings had their council of barons, an assembly of nobles who treated of affairs of state or assisted the king in the administration of justice. The legislative and judicial powers were united, and belonged to this assembly. The ancient usage was that the nobles should meet at Christmas either for a celebration or deliberation concerning the affairs of the kingdom. They were occupied in legislation, ecclesiastical affairs, questions of peace and war, imposition of taxes, or other matters of government.

As to the constitution of these assemblies it was undoubtedly feudal, and composed of the king's vassals, who owed him service both at court and in war. But these could not all have attended, as the vassals of William I exceeded six hundred in number. There is here no trace of election or representation. Under the first Norman kings two forces composed the govern-

ment: royalty and the council of barons. The history of England's chartered rights reveals the struggle between these two forces. It was during the continuance of this struggle that the commons commenced rising into importance. The fact that, more than any other, proves the rise of the commons, is the introduction of county deputies into parliament.

The first clear trace of this is in 1214, in the assembly convoked by John at Oxford. Some writs then issued, ordered that the followers of the barons should present themselves at Oxford without arms,* and enjoined besides that the sheriffs should send to Oxford four approved knights from each county "in order to consider, with us, the affairs of our kingdom." Here, for the first time, is representation, that is, the admission of certain individuals, who should appear and act in the name of all. The object undoubtedly was to attach the knights to the royal interest in the contest with the barons. The same struggle and policy ran through the reign of Henry III.

Forty years later, in 1254, in convoking an extraordinary parliament in London, Henry III

*Guizot, History Representative Government, 353.

addressed a writ to the sheriffs enjoining them to cause two knights to be elected in the county courts "in the stead of each and all of them,"* to deliberate on the aid to be granted to the king. Here is real representation. It is the entrance of the commons into parliament in the persons of the two knights who represent them.

Ten years later still, in 1264, a parliament was convoked to consist of peers, county deputies, and also borough deputies, thus giving it the extent it has since preserved.

The difference between county and town or borough deputies was, that the former came in right of being the immediate vassals of the king, while the latter came not upon any principle of right, but depended entirely upon isolated facts bearing no relation to one another. No general principle was invoked applying to all towns and boroughs. The grant of representatives to one did not involve any similar concession to another,† or others. Here, thus early, we discern the radical vice in the electoral system of England, which gave rise to the rot-

* Guizot, *History Representative Government*, 366.

† *Idem*, 355.

ten borough system, so much complained of until the passage of the reform bill in 1821. It arose from the privilege first conferred upon boroughs or towns, which finally ripened into rights. The borough changed sometimes, almost totally disappeared in the progress of time. But the right to send representatives still remained, and hence, in some cases, where the entire borough was owned by one individual, he alone was entitled to send the representative. At the same time other places had grown up into importance where no such right existed. Thus the representation of boroughs grew to be, in the extremest degree, unequal.

The regular parliaments embodying the principle of representation, having found their origin in the troublous times of John and Henry II. became more thoroughly formed and consolidated during the reign of Edward I.

Two kinds of parliament appear during this reign; the one composed only of the higher barons, the other of deputies from counties and boroughs. The attributes of these were almost identical, the same powers being often exercised by each. The first mentioned met much more

frequently, the last only upon extraordinary occasions, when some general impost was to be obtained from the freeholders.

In 1295, a complete parliament was convoked at Westminster, the writs being addressed to the bishops and archbishops, ordering them to cause a certain number of deputies for the chapters and for the clergy to be nominated,* also summoning forty-nine earls or barons individually, and also enjoining the sheriffs to cause two knights to be elected for each county, and two deputies for each borough in the county.

This parliament, at its meeting, was divided into two houses, one containing lay representatives, the other ecclesiastical; their place of meeting and votes being distinct.

In the beginning of the fourteenth century the parliament already rested on a fixed basis. It was composed

a. Of earls or lay barons which the king convened individually. Along with these were the principal functionaries of the king, such as the judges and members of the privy council.

b. Of archbishops, bishops, abbots, and pri-

*Guizot, Representative Government, 372.

ors, also summoned individually.* In regard to both these, and the earls or barons, no law or precedent defined who should be summoned. The king acted arbitrarily in this respect, summoning whoever he pleased. It had not yet settled into an hereditary right.

c. Of deputies, from the knights or freeholders of the counties. Here we meet with representation. The convocation of these deputies was more certain as it resulted from the right of every immediate vassal to a seat in the general assembly; and regular, because the county courts, whence they originated, were, all over England, composed of the same elements, and possessed of the same interests, constituting a uniform and identical whole, each being equally entitled to the privilege of representation.

d. Of deputies from cities, towns and boroughs. There was here no certainty or regularity. The admission of deputies from one city or town did not involve their admission from another, or even from the same at a future time. The number of town and borough deputies was

* Guizot, History of Representative Government, 374.

not fixed, but determined arbitrarily by the king. But the convocation of two for each county, and as many for each borough, finally passed into a rule. Neither the convocation of county nor borough deputies was originally a public necessity, but it became such when consent in all matters of impost was recognized as a right.

Who were the electors in the counties and boroughs, and what was the manner of election? In regard to the former, two facts present themselves.*

a. The direct vassals of the king who, on account of their inferior importance, ceased to attend the general assembly; naturally made it their business to attend the county courts.

b. The great body of freeholders also attended the same courts, and the one became merged in the other, both exercising the same rights. This general assembly of freeholders, having local as well as general matters to attend to, fell into the habit of appointing some one or more of its members, to attend to their local or general business.

* Guizot, Representative Government, 379.

The boroughs have a different history. It was not there the freeholder but the citizen, who controlled its operations. It was the citizens who managed the affairs of the borough in virtue of their charter, upon whom devolved the right of naming its representatives.

The electoral rights, were therefore, entirely different in the counties and boroughs. In the former being regular they have adapted themselves to all the vicissitudes of property, and have become proportionally extended, while in the boroughs, until the late parliamentary reform, they have remained unaltered. The mode of election was by open voting, which became perpetuated.

The true principle of representation in relation to counties and boroughs was originally carried into parliament.* The representatives of each entering there remained distinct. Those of the boroughs never deliberated with those of the counties; each treated with the government as to those affairs alone which interested itself, consenting on its own account to the imposition of taxes on its own constituency.

*Guzot, Representative Government, 393.

In process of time, however, this became changed, the county and borough members becoming united into one single assembly.* Towards the middle of the fourteenth century the parliament was divided into two houses, one the house of lords, in which the great barons were individually summoned ; the other that of the commons, comprising all the elected representatives of counties and boroughs.

This was an important result, and one that has fixed the destiny of England. Had the representatives of the counties and boroughs continued to remain separate in their meeting, in their interests, and in their action, the power of the commons would have been divided, and thus necessarily weakened, and by creating divisions between the two, the king, in conjunction with the lords, might easily have overcome them. But the representatives of the counties and boroughs having the same origin , appearing in parliament by virtue of the same title, election ; each alike in having in charge certain local interests, which were often identical;† by forming with each other a union so inti-

*Guizot, Representative Government, 419.

†Idem, 422.

mate as to form constituent parts of the same assembly, acquired for themselves such combined and concentrated power as to render them a co-ordinate branch of the English government, and vest in them the political supremacy which their real importance demanded. Thus, while the great barons, composing the house of lords, constituted the chief council of the king, and engaged in public affairs in a permanent manner by reason of their personal importance, the representatives of the counties and boroughs, clothed with a power not personal but representative, interfering in public affairs only from time to time and in certain particular cases, were enabled by their combination and united action, to exert an influence, little less than controlling, in the administration of the government.

The great lever through which the commons rose into power, and ultimately compelled that power to be recognized by the crown, was in the grant of supplies. When once the point was conceded, that the only road to the pockets of the people lay through the house of commons; that their vote alone could replenish an exhaust-

ed treasury ; they acquired a constitutional importance which cannot well be overestimated. This right, although early conceded, yet they were long in fully acquiring. But in the early part of the fourteenth century we find them possessed of so much strength in the exercise of it as to venture upon the annexation of conditions. In 1309 when granting to Edward II a twentieth part of their movable goods, they expressly attached the condition that “the king should take into consideration, and should grant them the redress of certain grievances of which they had to complain.”

In 1322 a statute was passed declaring that “thenceforward all laws respecting the estate of the crown, or of the realm and people, must be treated, accorded and established in parliament by the king,* by and with the assent of the prelates, earls, barons, commonalty of the realm.” This amounts, thus early, to a clear recognition of the commonalty as a co-ordinate branch of the government, and of its right to interfere in legislation, and all great public affairs.

*Gulzot, Representative Government, 461.

In perfect accordance with the principle thus early embraced in this statute, we find the action of the government. In 1328, a treaty of peace was made with Scotland, which was concluded with the consent of the parliament.* In 1331, Edward III consulted the parliament on the question of peace or war with France. In 1336, it urged the king to declare war against Scotland. In 1341, the parliament pressed Edward III to continue the war in France, and furnished him with large subsidies. In 1343, the parliament was convoked to examine and advise what had best be done in the existing state of affairs. In 1361, peace with France having been concluded, the parliament was convoked, and the treaty was submitted to its inspection, and received its approval. In 1368, the negotiations with Scotland were submitted to the consideration of the parliament. In 1369, the king consulted the parliament as to whether he should recommence the war with France, because of the non-observance of the conditions of the last treaty; and the parliament advised him to do so, and voted subsidies.

*Creasy, 218, 219.

These facts are all valuable as showing the constant practice of intervention by the commons in important national affairs at this early period, and during the strong reign of Edward III.

Another fact which it becomes important here to notice is the right of petition, its essence, origin and history. Its essence is a right to demand the reparation of an injury, or to express a desire. In the fourteenth century all petitions were addressed to the king. He governed, and possessed both the right and the power to redress grievances. But he governed in his council, the most eminent and extensive of which was the parliament. The regular practice was, that the king, by officers specially appointed for that purpose, received and examined all petitions, and afterwards called the attention of both houses to those with whose prayers he could not comply without their sanction. The interference of the houses of parliament was, therefore, only in certain cases, and then as a necessary council. All propositions in either house took the form of petitions to the king for his order, assent, or edict, which thus

had the force of law ; and at the close of each session, the clerks in chancery reduced the whole to a form of statutes. Thus, in its origin, the houses of parliament, and more especially that of the commons, were themselves the great public petitioner.

When the house of commons had achieved the position of a co-ordinate branch of the government, and acquired the possession of power as such, the right of petition to the two houses of parliament became regarded as a natural consequence of the right of petition to the king.

The importance of this consists principally in the creation of new avenues to the introduction of business. Formerly the government brought forward the questions which gave rise to the discussions in the two houses. Now the right of petition introduces a new initiative, and the humblest citizen, who forms no part of the public power, can, nevertheless, through the exercise of that right, introduce a subject of discussion, and thus set that power in motion.

It was during the long half century reign of Edward III that the parliament acquired much of its present constitution. We have already

seen the numerous instances of its intervention in the affairs of government. Another fact characterizing this reign is the great regularity with which the parliament was convoked. During his reign there were forty-eight sessions, nearly one session in each year. It passed acts providing for the regularity of its own convocation, and also to insure the security of its deliberations.

Again, it is during this reign that we hear for the first time of the parliament being divided into two houses;* and quite at the end of the same reign, in 1377, the parliamentary rolls first make mention of the speaker of the house of commons.

Another important fact to be noticed during this reign is the voting of taxes. Many instances occur of the imposition of arbitrary and illegal imposts, but the perseverance of the commons in the maintenance of their exclusive right of taxation was steady and continuous. They, in two cases, even extended it beyond the concession of subsidies. In 1340, the parliament appointed certain persons to receive the

*Guizot, Representative Government, 473.

accounts of the tax-collectors, and required them to give security for the payment of all they received. This is interesting as containing the germ of a right subsequently asserted and maintained, of demanding an account of the national expenditures. The first step in that direction was taken by making sure of the fidelity of the receipts. In 1354, the parliament, in granting a tax on wool, annexed to it a condition that the money so raised should be devoted to the war then carried on. This presents us with the rudiment of another parliamentary right, that of the appropriation of the public funds. The parliament appear during this reign to have participated generally in legislation. This is evident from the form of the statutes passed.

Besides taking an active part in things relating to wars and foreign affairs, the interference of parliament in the internal administration of the country was no less strongly marked. In 1342, the commons, profiting by an exhausted treasury, presented to the king two petitions.

“That certain by commission may hear the account of those who have received wools,

moneys, or other aid for the king, and that the same may be enrolled in the chancery." This, with some slight modification, was granted.

"That the chancellor and other officers of state may be chosen in open parliament, and at the same time be openly sworn to observe the laws of the land and magna charta." This also was granted with some modification. These, with their modifications, were immediately converted into statutes. Here again we find the rudiments of ministerial responsibility to parliament; the claim to exercise some influence over the choice of ministers, and also to hold them responsible for their conduct.

Thus the long reign of Edward III saw the English parliament established on a permanent basis. It has undergone but little real alteration since, only its functions have become better defined.

The power of the commons also increased under Richard II, so that at the accession of Henry IV, it might be said of the three following points, that the first was decided in their favor; the second admitted in principle, and the

third confirmed by frequent exercise. These were :

a. That they alone could grant taxes.

b. That all laws enacted must be with their consent.

c. That the administration of government was subject to their inspection and control.

During the domination of the house of Lancaster, the parliament also made some progress. The want of a clear title in the princes of that house probably exerted an influence on the extent of their prerogative claims. The parliament exercised with much opposition : *

a. The voting of taxes.

b. The appropriation of the subsidies.

c. The investigation of the public accounts.

d. Intervention in the legislature.

e. Impeachment of the great officers of the crown.

Two additional rights were also claimed, and quite a progress made towards their complete recognition under the Lancastrian princes. These were :

a. Liberty of speech to the members.

*Guizot, Representative Government, 510.

b. The inviolability of the members, their freedom from arrest.

In 1407, in a debate as to which house should have the exclusive right to introduce bills for the raising of taxes, it was finally settled : *

a. That such right should belong exclusively to the commons.

b. That it was the right of both houses that the king should take no cognizance of the subject of their deliberations until they had come to a decision upon it, and could lay it before him as the desire of the lords and commons in parliament assembled.

It was at this epoch that the lodgment of the ultimate judicial power was settled. That power originally resided in the entire parliament. At the suggestion of the commons in 1399, it was declared to belong exclusively to the house of lords.

During the reign of Henry VI, an act was passed limiting the right of franchise,† and enacting that for the future, knights of the shire shall be chosen by people dwelling and resident in the counties, whereof every one of them shall

*Guizot, Representative Government, 514.

†Creasy, 231.

have free land or tenement to the value of forty shillings, by the year at least, above all charges. Two years later was passed an act requiring the voter's freehold to be situate in the county for which he votes, and these contain essentially the basis for voting which has ever since been acted upon. During this long reign of Henry VI the power of parliament advanced, and almost absorbed the entire government.

During the century that occurred between Richard II and Richard III, there was a great diminution of England's feudal aristocracy. This was the era of sanguinary wars between the partisans of the houses of York and Lancaster ; between the white and red roses. Many of the great barons of England fell on the battlefield, and others were stripped of a great part or the whole, of their resources. Thus that sturdy baronial power that wrested magna charta from king John, no longer existed. It was broken down, and royalty had little to fear of opposition from that quarter.

The commons, it is true, had acquired many constitutional rights and privileges of great value. But they also had been wasted by civil

war; and besides, as against the crown, they were accustomed to follow the lead of the barons, and were not, therefore, in a condition to take their place in a struggle with royalty.

These were the circumstances under which the house of Tudor, in the person of Henry VII, acquired the crown of 1485. With an aristocracy so depressed, and well near annihilated, and with commons unaccustomed to take the lead in contests with the crown, and also laboring under great depression, we may naturally expect to see royalty again in the ascendant. We are not disappointed. The Tudors reigned with more absolute authority than their predecessors. Their better title to the crown, together with the circumstances just alluded to, enabled them to do this.

We find, therefore, Henry VIII, the successor of Henry VII, performing many acts which mark the worst of tyrants, and during his reign some parliamentary acts were passed of a general character which appear to be wide deviations from any previous action. Of these we have :

a. An act passed in 1529, releasing the king

from all debts he had contracted six years before, although his securities had in many cases passed into the hands of third persons who had purchased them for valuable considerations.*

b. That empowering the king, on attaining the age of twenty-four years, to repeal all acts of parliament made while he was under that age.

c. That declaring the proclamations of the king in council, if made under pain of fine and imprisonment, to have the force of statutes, provided they affected no one's property or life, and violated no existing law, and authorizing the king by proclamation to make any opinion heretical, and annexing death as the penalty of holding them.

These were each one, acts which disgraced the English parliament, and indicated the disposition to lay the liberties of the English nation at the foot of the throne. And what was worse, the oppression of the Tudors, although it was in fact less severe than that of many of the Plantagenets, was nevertheless exercised upon system. Under them, royalty laid claim to a primitive independent sovereignty. The powers

*Brougham, III, 254.

of the prerogative were asserted as matter of right to have a legal supremacy. Under its fearful shadow, royalty declared itself absolute and superior to all laws.

What this might have led to a century earlier it might be difficult to say, but the sixteenth century broke upon England and Europe with a new light. The spirit of industry was abroad. It penetrated every department. Agriculture, the mechanic arts, manufactures, commerce, with all their stirring activities, pervaded the hearts of men. To carry all these out required the exercise of bold, daring and free minds. The habits of the age, therefore, were all in direct hostility to the exorbitant claims of prerogative.

The result of this industrial activity was to accumulate wealth. Property lost its fixedness. It really changed hands, even baronial property could not stand against the spirit of the age. Landed property became divided, and between division and transfer the old feudal nobility wasted away. Persons who had acquired property by trade began to rise to distinction. At the beginning of the seventeenth century the

high nobility, composing the house of lords, did not equal in wealth the house of commons.*

There was something more than this new spirit and change of property, accompanied by change of circumstances. There was inaugurated a new march of mind. The mind claimed its prerogative as well as the king. Thought was free, bold and searching in its character. The principles of the Puritans were taking root in the soil of England. Political liberty could not long be divorced from those who were willing to sacrifice all for liberty of conscience.

Again, we are to consider that under the reign of the Tudors there were numerous concessions to the importance of parliament. This body under the Plantagenets had been a means of resistance, a guaranty of private rights, but under the Tudors it was an instrument of government, of general policy. While, therefore, as in the very acts we have cited, it was the tool of royalty, yet even by that means its importance became greatly increased.

The reign of the Tudors lasted a little over a century, and ended with that of Elizabeth,

*Guizot, 303.

about the close of the sixteenth century. At this period the free institutions of England may be said to consist :

a . Of maxims, principles of liberty, acknowledged in written documents.*

b . Of precedents, examples of liberty, which were scattered over their previous history.

c . Of particular local institutions, such as trial by jury, right of holding public meetings, of bearing arms, etc.

d . Of the parliament, now more necessary to the kings than ever, as their independent revenues, crown domains, and feudal rights, having disappeared, they had become dependent on their parliaments for their household expenses.

The house of Stuart succeeded to the crown in the person of James I, about the commencement of the seventeenth century. And then began the real contest between the crown and the parliament, which ended in the triumph of the latter. The mutterings of the tempest were heard during the reign of James, but it was rather a discussion of principles. He claimed absolute power as a birthright. His conduct

* Guizot, 305.

was fickle, weak and wavering, while the commons were firm and steady.

But under the second Stuart, Charles I. came the decisive conflict between the commons and the king, between free inquiry and pure monarchy. In the progress of the revolution three parties were very clearly developed. These were : *

a. The pure monarchy party, whose principles were entirely monarchical, but who advocated legal reform.

b. The political revolutionary party, who deemed the ancient guaranties insufficient, and sought to place the preponderance of power in the house of commons.

c. The republican party, who went for a radical change in the government, who sought to overthrow the old forms, and establish new ones : who wished to extend the power of the two houses, particularly of the commons, by giving to it the nomination of the great officers of state, and the supreme direction of affairs in general. Of these three, as is usual in revolutions, the last, which was the most radical, and

*Guizot, 308-9.

animated with the most enthusiasm, was in the end triumphant.

The first act of warfare on the part of Charles was the imprisonment of members of parliament for words spoken in debate.* But the house compelled him to release them by refusing to proceed to business until their release. Next he dissolved the parliament, but this only led to the election of another still more hostile. Another dissolution led to a third parliament, and it was from this that the famous petition of right proceeded, which constitutes one of the pillars upon which reposes the English constitution. By this, the parliament compelled the king to declare illegal the requisition of loans without parliamentary sanction, or the billeting of soldiers upon subjects, or commitment without legal process, or procedure by martial law. But when, in addition, they required him to give up the right of levying tonnage and poundage, he again dissolved the parliament and imprisoned the opposition leaders.

But to reign without a parliament was impossible, and another was summoned. This turned

*Brougham, III, 273.

out to be what is termed the long parliament, which survived the king. This parliament passed a bill to secure the calling of parliaments every three years; prohibited their dissolution by the king until after a session of fifty days; declared illegal all levies of customs and imposts without consent of parliament; and forever abolished the star chamber and high commission courts, depriving the privy council of all jurisdiction in criminal matters. They also passed an act to prevent a dissolution without their own consent, which, of itself, changed the entire constitution.

This parliament continued its session for eighteen years. Under its rule, war was waged against the king, who was ultimately taken, tried and executed. It abolished royalty, declared it treason to give any one the title of king without act of parliament, set aside the house of lords, thus leaving the whole power, legislative and executive, vested in the commons.

This parliament was succeeded by one of Oliver Cromwell's selection, called Barebone's parliament, which, showing some disposition towards independence in the exercise of its pow-

ers, was dissolved, and the protectorate proclaimed. The government was now little other than a military despotism. The real power all centered in the protector, Oliver Cromwell. He well knew the necessity of governing by a parliament, and endeavored to do so, but failed to get together one that would long satisfy his wishes. He had recourse, for this purpose, to all the various parties. He tried the religious enthusiasts, the republican, the presbyterians, and the officers of the army. He got together and dissolved four parliaments, each one having endeavored to wrest from him the authority which he exercised, and to rule in its turn.

He finally reigned alone, the government he inaugurated being little other than a military despotism. But every measure of his was conceived in wisdom, prosecuted with energy, and crowned with success. His rule, although despotic, was one of the most important in the English annals.

On the death of Cromwell, his colossal power, the exercise of which had depended upon his own personal energy, disappeared at once, and thereupon, in 1660, the nation welcomed back

the house of Stuart, in the person of Charles II, the brother of Charles I. The revolution had taught at least three truths :

a. That the king could never again separate himself from the parliament. That the two must reign together, neither one being competent to reign alone.

b. That the house of commons was the stronger branch of the parliament.

c. That Protestantism had achieved a complete and definite ascendancy in England.

Some important acts date their origin from the reign of Charles II. Two of these are worthy of note. The first was to prevent the legislature being overawed, and their votes coerced by riotous and seditious mobs, under the guise of petitioners.

The second was the celebrated habeas corpus act, which prescribed a remedy, prompt and efficacious, in all cases of arbitrary imprisonment, without process of law. It brought immediately before the judge, the prisoner, with the cause, if any, of his detention, and in case the imprisonment was illegal, discharged him.

But the reign of Charles presents a great

contrast with that of Cromwell. He began with Lord Clarendon as prime minister, who represented the pure monarchy party. 'Next we have what was termed the cabal ministry, formed of profligates and libertines,* whose government, although evincing practical skill in its management, and considerable intelligence and liberality, was, nevertheless, profoundly selfish and immoral. The nation rebelled against this government of profligates.

A new ministry was formed, a national one ; but that, with a corrupt king and court, could not gain possession of the moral force of the country. Charles, now having tired all parties, commenced a career of absolute power. But in the midst of it he was called away, and the crown descended upon the third Stuart brother, James II.

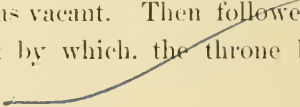
James, with his court-party, his power of patronage, his supple judges, and his subservient crown lawyers, succeeded in tearing away many of the barriers of the constitution, and in so extending the prerogative, as to create an absolute monarchy. And yet, while seemingly

*Guizot, 316, 317, 318.

having every political power at his disposal, the short period of a single week was sufficient to make him a throneless, crownless wanderer. This extraordinary result was, in great part, due to foreign politics.

The two great powers that were then dividing Europe between them in their conflicts were Louis XIV. and William, Prince of Orange. The former represented the Catholic and monarchical principles, the latter the Protestant and liberal. England, through her two kings, Charles II and James II, had been, for the most part, unknown to herself, subserving the interests of Louis XIV. William was the nephew, and had married Mary the daughter of James I. He was both a statesman and a soldier. The English nation sympathized with him and his large, free, protestant principles. The revolution of 1688, occurred, which, almost without bloodshed, placed William and Mary upon the English throne.

A new parliament was assembled, which declared that King James had abdicated, and that the throne was vacant. Then followed the act of settlement by which, the throne being



declared vacant, and James and his children being set aside, the succession to the crown was settled : 1. Upon William and Mary. 2. Upon their death without descendants upon Anne, also a daughter of James I. and by a subsequent act. 3. Upon her death without descendants, then it was limited to the descendants of James I's daughter, Sophia, who had married the Elector Palatine of Hanover.

This was, in every aspect of the case, a revolution. It changed the entire order of succession. James had never abdicated. Expulsion is not abdication. Then his descendants were set aside. It presents a clear example of a whole people, the commons taking the lead, rising against the head of the government, or at least a co-ordinate branch of it, expelling that head or branch and changing the entire order of succession, and that order of succession has ever since been followed. William and Mary, and Anne, successively died without leaving any descendants. Then came in the house of Brunswick, in the person of George I, the grandson of James I. and son of the Elector Palatine. Ever since 1689 the king of England has only been such by virtue of this

act of settlement. However other kings may claim to reign by divine right, the king of England clearly can not. He reigns by virtue of an act of parliament. It is important to notice that the power of the people is the real source from which England's king can claim the exercise of any authority. Any other conclusion would render the English government a government *de facto*, and not *de jure*, for the last one hundred and ninety years.

Along with the act of settlement, and constituting a part of it, was also a bill of rights, which reasserted in clear, strong terms, all those great cardinal truths and principles in governments which the commons and generally the peers also, had been contending for ever since the grant of the great charter. Among these were the declaration that there existed no power, without consent of parliament, to suspend or dispense with laws or their execution ; or to levy money for or to the use of the crown by pretense and prerogative. That the right of petition should be enjoyed unimpaired. That without consent of parliament, no standing army should be raised or kept in the kingdom in time

of peace. That Protestant subjects may have arms for their defense. That elections of members of parliament shall be free. That freedom of speech and debate shall not be impeached or questioned out of parliament. That excessive bail shall not be required, or excessive fines imposed, or cruel or unusual punishment inflicted. That jurors may be duly impaneled and returned, and those passing upon high treason be freeholders, and that for redress of grievances, parliaments be held frequently.

The provision in regard to a standing army has rendered it necessary to pass acts annually since that time, authorizing the keeping on foot a defined number of troops,* and giving the crown the power of exercising martial law over them. So, also, in regard to the revenue, since the reign of William and Mary, the practice of the commons has been, not to vote the crown certain large sums of revenue, to be subject to its application, but to appropriate specific parts of the revenue to specific purposes of government.

The revolution of 1688 closes the long line of

*Creasy, 293.

contests between king and parliament. For about seven hundred years those contests had been going on. As a general fact, both the commons and the nobility had been found fighting together the great battles of constitutional freedom. As another general fact, although meeting with occasional reverses, they had always been ultimately successful. Always temperate in their claims, wise in their means, steady and energetic in their course of action, they had always proved faithful to the great trusts confided to them ; and as the last crowning evidence of their triumph, had bestowed the English crown upon two of their own selection, prescribed the direction it should take, and annexed the proper limitations to the exercise of its power. Since that period, the English constitution has moved on uninterruptedly, its workings eliciting the admiration of all thinking men wherever they might be found. The reform bill of 1832 was called for by the great changes which time had wrought in the borough system.* By it, fifty-six boroughs were wholly disfranchised, and thirty-one partially. Forty-three

*Creasy, 312.

new ones were created, twenty-two of which return two members, and the remainder one member each. By these salutary changes, and others relating to property qualifications for voting, the power of the crown, and of the different members composing the aristocracy, has been very much diminished in procuring the election of members, while the middle classes have risen to greater importance, and become vested with a larger proportion of political power. Thus greater equality is given to the principle of representation, and its more perfect results produced.

CHAPTER IV.

ITS PRESENT WORKINGS.

Having traced the history of the British constitution : 1st. In its sources. 2d. In its charters. 3d. In the origin and growth of that great national council which ultimately became its parliament, we are now prepared to examine its present workings.

In speaking, however, of the British constitution we are not to understand that, as in the United States, and in the different States, there is any written instrument which arranges and defines its different powers. England's constitution, like her common law, is unwritten. It is the gradual growth of centuries. Both that and the common law have been so many developments of human reason in its most practical forms : as the necessities of human progress, and the exigencies of advancing society have from time to time demanded. In America, the written constitution is the fundamental law in subjection to

which all legislation takes place. In Great Britain the great charter, the petition of right, the declaration of rights, and certain great principles acknowledged as lying at the foundation of all governmental action, altogether constitute what may be termed the British constitution. Although, therefore, the king and parliament are omnipotent; and an act which receives the sanction of both lords and commons, and the assent of the king, becomes in form a valid and binding statute; yet, if it contravenes any of those great principles, and thus sins against the genius and spirit of the government, it is unconstitutional and void.

The following are the points to be kept in view in the working of the British constitution:

1. The distribution of political power in reference to localization and centralization.
2. The co-ordinate branches of which the central power is composed.
3. The powers lodged in each.
4. The checks which each one is capable of exercising against the others.

1. The distribution of political power in reference to localization and centralization. We

have noticed the contests between royalty and the commons as the feudal aristocracy declined, and in most governments the ultimate triumph of royalty attended by a more or less complete centralization. The establishment and exercise of pure royalty is consistent only with a high degree of centralization.

By this term is meant a government proceeding entirely from the central power. It is not necessarily a despotism, or a monarchy. An aristocracy, or any other form of government, in which all political power centers in one common head, whether in a cabinet or a general council, is a centralized government. Not only is the political power felt and exercised through the whole society, but all the officials, also, are appointed by, and derive all their power from, the same source. The most intensely centralized government is the severest despotism. In such, no local power exists to counteract the exercise of the central power.

On the other hand, the exercise of well defined local powers is an important, perhaps an essential, element in the composition of a free government. They operate as a most salutary

check upon the unrestrained oppressive action of the central power. They essentially modify it in its exercise, and within constitutional and well defined limits, are in the highest degree beneficial. In this country the political power exercised in the school districts, the towns, villages, cities, and counties, affords a salutary modification to that exercised by the State ; and, higher still, that possessed by the State, to that exercised by the United States.

In England local power was early in asserting its claims. It was bequeathed to western Europe by the German races. Among the Saxons each local district had, in local matters, the government of itself. The county court, so early established in England, so purely local in its officers and jurisdiction, so independent in its sphere of action, has contributed largely to restrain the action of the central power.

The object, however, is not alone to restrain, or even to modify. It is to devolve upon local authorities the exercise of those powers that are purely of a local character, and affecting local objects. The relief of the poor, the repair of roads and bridges, the preservation of the peace,

the administration of justice, and a multitude of other local acts are effected through these means. Among these are also included the judicial and administrative powers confided to justices of the peace, and the executive power exercised by the sheriff. The county courts, with a few exceptions, must try all causes not exceeding £20.

“ There are almost innumerable other spheres of political action, each comparatively humble and limited in itself, but collectively, of infinite importance, on account of the universality of their operation,* and the daily and hourly duties and interests of every man's life which they affect. Every parish has its vestry : that is to say, an assembly, where the inhabitants of a parish meet together for the dispatch of the affairs and business of the parish. Every borough has its town council, every poor law union has its board of guardians. Each of these is a deliberative, a legislative, and a taxing body. In each of these, the elections of various functionaries are conducted ; and many of them are themselves representative bodies, varied and renewed by general annual elections.”

*Creasy, 323

In the election and service of these local officials, generally two facts strike us :

1. The electors of all such are required to have some property qualification.*

2. With few exceptions, the local authorities, both in town and county, receive no salary. It is understood to be every man's duty to aid in the maintaining of good order, and in sustaining the social economy of the district in which he resides.

Several results flow from these local organizations :

1. It is a government within a government, both in its administrative and judicial functions.

2. It affords opportunities to ambitious aspirants, to expend, on a small scale, those energies which would otherwise be unemployed, or exert a hurtful influence.

3. It gives opportunities to boisterous spirits, to expend themselves without harm, and thus operates as a safety valve to conduct away innocently, what might otherwise produce explosion and destruction.

4. It serves as a school in which are con-

*Creasy, 339

stantly kept in training, those who may ultimately be transferred to higher spheres of usefulness, and display themselves on the nation's theatre.

5. It keeps alive and nourishes in the homes of the English people that knowledge of political transactions, and those feelings of freedom and independence that impart such strength and power to the English character.

6. It affords ready facilities to organization, and aggressive resistance to all tyrannical exercise of power.

7. It constitutes so many independent centres in which are discussed the proceedings of the central power, and so many distinct tribunals sitting in judgment upon such proceedings.

8. It is, therefore, the one principal source of that public opinion, which in England is so omnipotent on all political questions.

9. It is a development of that self-governing spirit of the English people which enables them to administer correctives to misgovernment, and even to continue on their accustomed course, when by the resignation of the ministry, the

machinery of the central government stands still.

These several local administrations are directly connected with the general government by their representation in the house of commons. This leads to the consideration of the elections to that house.

The reform bill of 1832, as we have already seen, corrected many of the evils growing out of the old rotten borough system. There is still, however, by no means an equality of representation of the commons in parliament. But the approach towards it is so considerable, the rotten boroughs so many of them disfranchised, and the base of representation so widened, that the power of the crown in procuring the election of members, and thus controlling the action of parliament, is very much diminished.

Another fact we have also to notice, and that is, the property qualification necessary to constitute an elector. The right of voting for borough representation is limited to the householder who takes and resides in a ten pound house, while that of voting for a county representative requires only a forty shilling freehold.

The practical result of this has been that in the general election of 1852, it is estimated that something more than one man in every five in England and Wales exercised the elective franchise.* The number elected and composing the house of commons amounts to the large number of 658. But of this number there are seldom over five-sixths who attend.†

The central power in Great Britain, in its executive, legislative, administrative, and ultimate judicial functions, is exercised through the king, lords and commons. These are the great co-ordinate branches of the government. It is in the powers lodged in each of these respectively, and the checks which each is capable of exercising against the others, that we are to find the solution of the problem so long sought for, and here for the first time found, how it is possible to confer powers and energies of unlimited extent, and yet throw around them such safeguards as entirely to protect human freedom from the severity of their exercise.

Of these co-ordinate branches, the crown may well claim the first place. The crown is su-

*Creasy, 317

†Brougham, III. 317

preme. Its wearer and owner is an essential part of the sovereign legislative power. It is the king who issues his writs to the sheriffs of the different counties, commanding them to cause a return of members to parliament. That body convenes in obedience to his call. He is the nation's chief magistrate and all other magistrates act by his commission.

With the king is lodged the executive power. As executive he has the appointing power. In each county he appoints :

1. The lord-lieutenant, who represents the sovereign in his rights and powers as chief of the old common law military force of each county.*

2. The sheriff, who is the civil executive officer of the county.

3. The justices of the peace, who are charged with the performance of both judicial and administrative duties. All these we have just mentioned act without pay.†

He also appoints to all offices in the army and navy. He has the entire disposition, as commander in chief, of all those forces.

*Creasy, 328.

†Idem, 332.

He is also externally, in dealings with other states, the visible representative of the majesty of the state. He exercises the sole prerogative of making war or peace. He enters into, and carries on, all negotiations, and forms all alliances. In judicial matters he has ever been regarded as the fountain of justice. He superintends the administration of the civil and criminal law, and confirms, or remits all sentences.

His first business, upon receiving the crown, is to surround himself by constitutional and responsible advisers. These carry on the entire administration in the name of the sovereign. They are about fifteen in number, and are called ministers of state. They are privy councillors, and together form the cabinet.* The chief is the first lord of the treasury, called by way of distinction the premier, or prime minister.

Another important cabinet officer is the chancellor of the exchequer, who is charged with the finances of the empire. There are also four secretaries of state, the home, foreign, colonial, and war.

Another member of the cabinet is the lord

*Creasy, 327.

chancellor, who is intrusted with the great seal, and is the keeper of the king's conscience.

Theoretically all the members of the cabinet may be selected by the king from among any of his subjects.

But practically his choice is quite limited. His ministers can only conduct the government and rule through majorities in parliament. They must, therefore, belong to the party which is dominant in parliament. They must be, at least several of them, members of parliament, and gifted with powers adequate to securing majorities there. The moment the ministry are outvoted in parliament, they have no other alternative than to resign. Another cabinet must be formed, composed the more generally by those of the opposite party, who in their turn, must keep with them the parliamentary majority.

The parliament, exclusive of the crown, consists of two houses, the lords and commons. The latter is elective, and its power reposes on the representative system. When a new parliament is to be summoned, a writ, under the great seal, is issued to the sheriff of each

county,* requiring him to cause the election of the county representatives, and also of those of each city and borough within his shire that returns members. The sheriff then issues his precepts to the head of each of these municipal constituencies, who return the same to him with the names of the persons elected, of all which a general return is made to the lord chancellor.

The lords, composing the upper house, constitute a permanent branch of the legislature, subject to little fluctuations or changes. They sit in their own right,† but may be considered as representing their powerful families and immediate connections, as also all the great land owners in the country. The house of lords consists of peers, both spiritual and temporal. The prelates, equally with the barons, are entitled to sit in the house, the former by virtue of the sees which they respectively hold.

The crown possesses a prerogative, in reference to the house of lords, which may be somewhat dangerous in its exercise. This relates to the power of creating peers to an unlimited ex-

*Creasy, 330.

†Brougham, III, 304.

tent. This may, and indeed on several occasions has been exercised to influence the proceedings in parliament.* The sudden creation of twelve peers in the reign of queen Anne carried a question of importance in the house of lords. So it would be possible to carry any question through that house, by the creation of a necessary number of new peers. That necessity, however, could only arise where the king and commons were on one side and the upper house on the other. The passage of the reform bill of 1832 came very near requiring the exercise of this extraordinary prerogative. It has, however, never been exercised to the injury of the country.

The commons alone possess, or rather exercise, the right of originating supply bills, or any involving the necessity of taxation. The upper house has never abandoned its claim to originate and alter money bills, as well as the lower; but in practice the right has never been there asserted, the commons alone having originated every measure of supply. As the lords originate no money bills, so they exercise no

*Brougham, III, 307.

power to alter or amend those sent up from the commons,* but either wholly accept or reject them. This all important instrument of power and remedial agent, the commons keep exclusively to themselves.

There is also another point on which the commons claim the exclusive right of originating measures,† and that relates to the election of its own members. They assert this as an inherent right, and also as inalienable, maintaining that the house cannot convey it to any other body.

The laws are administered by the different courts, and with the exception of the judges in the ecclesiastical courts, and some other trifling exceptions,‡ the crown has the exclusive power of appointing all the judges. Their tenure is for life or during good behavior. They are irremovable except by a joint address of the two houses of parliament, and as this requires, in addition, the assent of the crown, it is practically a statute, having the concurrence of the whole three branches of the legislature. Thus the common law judges, although named by the

*Brougham, III, 305.

†Idem, 306.

‡Idem, 310.

crown, are, nevertheless, independent in the tenure of their office.

The lord chancellor, who has only civil jurisdiction, and who as keeper of the great seal, and the king's conscience, forms a member of the cabinet,* holds his place only during pleasure, but the other equity judges, the master of the rolls, the vice chancellors, and the masters in chancery, all hold their offices during life or good behavior.

To guard still further the purity of the bench, the judges are disabled from sitting in the house of commons.

“Thus” says Lord Brougham, “the judicial power, pure and unsullied, calmly exercised amidst the uproar of contending parties by men removed above all contamination of faction, all participation in either its fury or its delusions, held alike independent of the crown, the parliament and the multitude, and only to be shaken by the misconduct of those who wield it, forms a mighty zone which girds our social pyramid round about, connecting the loftier

*Brougham, III, 371.

and narrower, with the humbler and broader regions of the structure, binding the whole together, and repressing alike the encroachments and the petulance of any of its parts."

With the commons alone lies the power of impeachment, but that body has no power to try it. Its trial is before the house of lords, and its ultimate decision rests with that body. And so other judicial powers rest with the house of lords. It is the court of last resort, of ultimate appellate jurisdiction in all cases of law and equity from the whole united kingdom. This house always contains peers who fill, or have filled, the highest stations in both courts of law and equity. These are commonly called the law lords, and practically it is those who have the entire decision of the cases brought before the house.

Thus of the three estates of British realm we have :

1. The crown, which, whatever may in former times have been claimed of its existing by divine right, by the grace of God, can certainly, since the act of settlement in 1689, lay claim to no higher warrant than the joint will of the

aristocracy and people of England. In this we have centered the executive power a large proportion of the administrative, which is exercised through the ministry composing the cabinet.

The crown is also a necessary element in the composition of the legislative power. No act of parliament can claim the force of a law before it receives the sanction of the crown. It has thus a veto upon all the legislation of the lords and commons.

The king's person is inviolable. No legal proceeding can be instituted against him. The received maxim is, that the "king can do no wrong." But the king only acts through his constitutional advisers, his ministers. And although he is not responsible yet they are ; and through them his administration is made accountable.

2. The house of commons, a representative body, standing in the place, and wielding the political powers of the people of Great Britain. Their function is chiefly legislative. They may originate every legislative measure. They must originate all supply bills, requiring the necessity of taxation. They have also the

power of impeachment. They are the changing element.

3. The house of lords, the permanent element in British legislation. Its habits, interests, prejudices, all tend to render it a conservative body. It stands between the crown and the people, ready to throw its weight into either scale that may be required to adjust aright the balance.

In the individuals composing this body, is to be found the highest style of culture : the most illustrious rank united with vast possessions, and when to these are added great capacity, enlarged statesmanlike views, a power of originating all legislative measures except money bills, and the highest judicial power in the nation, we must recognize in it an estate in the highest degree important in the British constitution. These three together compose the parliament, "that parliament of Great Britain, which," says Edmund Burke, "sits at the head of her extensive empire in two capacities, one, as the local legislation of this island, providing for all things at home, immediately, and by no other instrument than the executive power. The

other, and, I think, her nobler capacity, is what I call her imperial character, in which, as from the throne of heaven, she superintends all the several inferior legislatures, and guides and controls them without annihilating any."

The judicial exists independent of the legislative and executive, charged with functions, of all others perhaps the most necessary for the preservation of the state, the administration of the law ; and looked to in times of storm and peril as the ultimate conservative power in the state.

A brief allusion to the evils to be guarded against, and the checks which the constitution provides as the safeguards against their occurrence, is all that now remains for our consideration.

These evils are threefold:

1. The subversion of the upper and lower houses resulting in the supremacy of the king, the establishment of a despotism.

2. The subversion of the crown and the commons, and the supremacy of the lords ; the establishment of an aristocracy.

3. The subversion of the crown and the

lords, and the supremacy of the commons ; the establishment of a democracy.

To comprehend fully the force of the checks by which each and all these evils may be constitutionally averted, we must understand that acts of parliament constitute the fundamental law of the British empire. That they are omnipotent, and are to Great Britain what both constitutional and legislative provisions are to us. We must also understand further that no act of parliament can be deemed complete, and have conceded to it the force of law unless it has received the assents of the three estates, the king, lords, and commons. Now let us proceed to inquire what checks each one of these three co-ordinate branches has upon the others ; what means of defence the constitution has placed in the power of each, so that that integrity of each can be fully preserved.

The crown is amply provided:

1. By its large executive and administrative powers ; its power of appointments, its command of all armies and navies.

2. By its power of increasing the house of lords by the creation of new peers, thus, if

necessary, giving the upper house a preponderance over the lower.

3. By its veto, thus arresting and destroying in its progress towards maturity every act which it deems essentially prejudicial to itself, or to the country, although it may have passed, and received the sanction of both houses.

4. By its power of proroguing or dissolving parliament at any moment when it deems that the public exigencies so require.

The house of lords is sufficiently protected:

1. By the immense personal influence of its members, arising from their great wealth, commanding talents, and powerful connections.

2. By its constituting the high court of impeachments, and the highest appellate court in the realm.

3. By its constitutional negative, or veto, which it may interpose upon any and all acts which come up before it from the house of commons.

It must be admitted, however, that the house of lords has a less amount of constitutional power, can put into operation less effective

checks that are purely constitutional, than either one or the other co-ordinate branches.

The commons are amply protected:

1. By their power of impeaching every member of the king's cabinet.

2. By the negative, or veto power, which they can put upon every act which comes up before them. This is now considered only in reference to their own protection.

3. By their power of changing the entire policy of the crown, and compelling it to adopt a different policy, or to resort to the hazardous measure of dissolving the parliament, by voting down any government measure, thus leaving the ministers in the minority, and compelling a change in the cabinet, or stopping the wheels of government until such change shall be made.

4. By refusing all supplies to carry on the government until all the grievances they complain of shall be redressed.

In full view of the gradual growth of the British constitution: of its localizing and centralizing forces; of the arrangement of its co-ordinate branches; of the powers assigned to each branch; and of the strong checks possessed by

each as against the others; it may be safely pronounced that of all efforts hitherto made by the race in so creating and arranging the political forces that enter into the governmental element as to secure their greatest harmony of action, no other ever devised has evinced such deep sagacity, such profound forecast, and such wealth of wisdom. To it must come the great statesmen of all countries, and of all times, to study the science of government. Under its strong guaranties repose in perfect safety those indomitable forces that in all quarters of the world are swaying the sceptre of universal empire; that colossal power whose morning drum-beat, following the course of the sun, and keeping company with the hours, encircles the globe daily with the martial airs of England.

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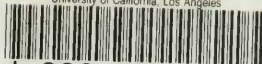
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